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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,429	01/29/2002	Thomas Juestel	DE 010029	6841

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EXAMINER

KOSLOW, CAROL M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 05/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
10/059,429	JUESTEL ET AL.	
Examiner	Art Unit	
C. Melissa Koslow	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

The abstract of the disclosure is objected to because it refers to figure 1 and reference number (9). The abstract needs not include a reference to a figure nor (9). Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: The formula for the intrinsically pigmented aluminate phosphor includes compositions where cobalt is not present ($z=0$), but cobalt is the ion that makes the phosphor intrinsically pigmented. It is suggested to change " $0 \leq z < 1$ " to " $0 < z < 1$ ", so it clear cobalt must be present. Appropriate correction is required.

Claim 2 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim.

Claim 2 claims the definition for the phrase "intrinsically pigmented", thus it does not further limit claim 1 since the definition of "intrinsically pigmented" is part of claim 1.

Claim 1 is objected to because of the following informalities: Reference number (9) should be deleted since it is unnecessary. This deletion would not affect the scope of the claim. Appropriate correction is required.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 teaches the phosphor is intrinsically pigmented, which means it contains an ion which has absorption bands within the wavelength range of the emission of the phosphor. The formula in claim 3 includes compositions where cobalt is not present ($z=0$), but cobalt is the ion

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that makes the phosphor intrinsically pigmented. It is suggested to change " $0 \leq z < 1$ " to " $0 < z < 1$ ", so it clear cobalt must be present.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 6 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zachau et al.

This reference teaches a phosphor having the formula $\text{BaMgAl}_{10}\text{O}_{17}:\text{Eu}_y$, where y is 0.03-0.4 (col. 4, lines 15-18). Example 6 teaches a phosphor having the formula $\text{BaMgAl}_{10}\text{O}_{17}:\text{Eu}_{0.06}$. These formulas fall within the claimed formula. The reference clearly teaches the claimed phosphor.

Claims 4 and 5 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Ellens et al.

This reference teaches a phosphor co-doped with praseodymium, where the praseodymium absorbs part of the light emitted by the phosphor (col. 4, lines 10-13). Thus the reference teaches an intrinsically pigmented phosphor. The taught phosphor is used in light sources, which means it is present as a layer on a support, when used in a lamp. Accordingly, the reference teaches the claimed luminous screen. A luminous screen is simply a phosphor layer on a support. The reference teaches the claimed screen and phosphor.

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Claim 5 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. patent 4,452,843 or WO 99/38701.

Claim 5 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. patent 6,344,261.

U.S. patent 6,344,261 is the U.S. national stage application for WO 99/38701 and thus it is a translation for WO 99/38701.

These references teach a phosphor co-doped with a transition metal ion which absorbs part of the light emitted by the phosphor, such as cobalt, iron or chromium. Thus the reference teaches an intrinsically pigmented phosphor. The references teach the claimed phosphor.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being obvious over Juestel et al.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by a statement indicating that the application and reference were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

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This reference teaches a plasma picture screen provided with a phosphor layer where the phosphor can have the formula $(Y_{1-x-y}Gd_xPr_y)BO_3:Tb$, where x is 0-1 and y is 0-0.05. Column 1, lines 45-49 teaches it is known in the art that the amount of terbium in yttrium gadolinium borates is greater than 0 and less than 0.1. Accordingly, one of ordinary skill in the art would expect this to be the activating amount of terbium in $(Y_{1-x-y}Gd_xPr_y)BO_3:Tb$. This formula overlaps the intrinsically pigment borate phosphor discussed by applicants in the present application. Thus Juestel et al suggests this phosphor. Therefore, Juestel et al suggest the claimed phosphor, luminous screen and plasma picture screen.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,462,473.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed picture screen suggests the claimed screens and phosphor for the reasons given above.

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Claim 3 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

There is no teaching or suggestion of a plasma display screen having the claimed cobalt containing aluminate phosphor.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (703) 308-3817. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at (703) 308-3823.

The fax number for Amendments filed under 37 CFR 1.116 or After Final communications is (703) 872-9311. The fax number for all other official communications is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661 or (703) 308-0662.

cmk
May 12, 2003


C. Melissa Koslow
Primary Examiner
Tech. Center 1700